Financial Services Authority

FIRST SUPERVISORY NOTICE

To: Alpha to Omega Limited

Of: Kings Worthy House, Court Road, Kings Worthy, Winchester, Hampshire, SO23 7QA

Date: 18 January 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") has taken the following action:

1. ACTION

1.1. For the reasons listed below and pursuant to section 45(1)(c) of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to vary the permission granted to you, Alpha to Omega Limited ("A2O"), pursuant to Part IV of the Act by imposing a requirement with immediate effect from the time set out in paragraph 2.1 below such that:

(1) A2O will cease, with immediate effect, conducting all regulated activities for which it has permission except to the extent permitted by 1.2 below; and

(2) A2O will, as soon as is practicable, and in any event by close of business on Friday 22 January 2010:

(a) send a letter on its headed notepaper by first class post and/or electronically to each of its appointed representatives in a form provided by the FSA, notifying them of the change in its permissions; and

(b) provide the FSA with copies of the said letters together with a list of all appointed representatives to whom it was sent and the date on which it was sent.

1.2. This variation of permission does not apply to any regulated activities undertaken to complete existing transactions. Existing transactions are where all proposals and/or applications have been completed, signed and dated by the client, prior to the imposition of this variation.

2. EFFECTIVE DATE

2.1. This notice takes effect at and from 5.00 pm on Wednesday 20 January 2010.

3. REASONS FOR ACTION

3.1. Pursuant to section 45(1)(a) and (c) of the Act, it appears to the FSA, on the basis of the facts and matters described below, that you are failing to satisfy the threshold conditions and that it is desirable to exercise the power to vary your permission in the manner set out in paragraphs 1.1 and 1.2 above in order to protect the interests of consumers or potential consumers.

3.2. The FSA considers that it is necessary, in order to protect consumers, for the variation to take immediate effect at and from the time set out in paragraph 2.1 above.

4. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

4.1. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers and the preservation of market confidence.

4.2. Pursuant to section 45(1)(a) and (c) of the Act, the FSA may vary a Part IV permission in any of the ways mentioned in section 44(1) of the Act, or cancel it, where it appears to the FSA that the firm is failing, or is likely to fail, to satisfy the threshold conditions and that it is desirable to do so in order to protect the interests of consumers or potential consumers.

4.3. Pursuant to section 44(1) of the Act, the FSA may vary a permission by removing a regulated activity from those for which it gives permission (section 44(1)(b)) and varying the description of a regulated activity for which it gives permission (section 44(1)(c)).

4.4. Pursuant to section 45(4) of the Act, the FSA's power to vary a Part IV permission under section 45 extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act.

4.5. Pursuant to section 43 of the Act, a Part IV permission may include such requirements as the FSA considers appropriate. This includes a requirement to take specified action or to refrain from taking specified action and may extend to activities which are not regulated activities.

4.6. Pursuant to section 53(2) of the Act, when the FSA exercises its own-initiative power to vary an authorised person's Part IV permission, the variation may take effect immediately, on a specified date, or when the matter to which the notice relates is no longer open to review.

4.7. Pursuant to section 53(3) of the Act, a variation may be expressed to take effect immediately or on a specified date only if the FSA, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the variation to take effect immediately or on that date.

4.8. Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which provides that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including his connection with any person, the nature of any regulated activity that he carries on or seeks to carry on and the need to ensure that his affairs are conducted soundly and prudently.

The FSA's policy on exercising its own-initiative power to vary a Part IV permission

The Enforcement Guide

4.9. The FSA's policy on exercising its power to vary a Part IV permission on its own initiative is set out in Chapter 8 of the Enforcement Guide ("EG").

4.10. EG 8.1B provides that, when it considers how it should deal with a concern about a firm, the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it. It will also have regard to the responsibilities of a firm's management to deal with concerns about the firm or about the way its business is being or has been run and to the principle that a restriction imposed on a firm should be proportionate to the objectives the FSA is seeking to achieve.

4.11. EG 8.2 provides that the FSA will proceed on the basis that a firm (together with its directors and senior management) is primarily responsible for ensuring the firm conducts its business in compliance with the Act, the Principles and other rules.

4.12. EG 8.3 provides that, in the course of its supervision and monitoring of a firm or as part of an enforcement action, the FSA may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the FSA will seek to agree with a firm those steps the firm must take to address the FSA's concerns. However, where the FSA considers it appropriate to do so, it will exercise its formal powers under section 45 of the Act to vary a firm's permission to ensure such requirements are met. This may include where:

(1) the FSA has serious concerns about a firm, or about the way its business is being or has been conducted;

(2) the FSA is concerned that the consequences of a firm not taking the desired steps may be serious; and where

(3) the imposition of a formal statutory requirement reflects the importance the FSA attaches to the need for the firm to address its concerns.

4.13. EG 8.5 provides examples of circumstances in which the FSA will consider varying a firm's Part IV permission because it has serious concerns about a firm, or about the way its business is being or has been conducted. These include where, in relation to the grounds for exercising the power under section 45(1)(c), it appears that the interests of consumers are at risk because the firm appears to have breached any of Principles 6 to 10 of the FSA's Principles (as to which see below) to such an extent that it is desirable that limitations, restrictions, or prohibitions are placed on the firm's regulated activity.

4.14. EG 8.6 provides that the FSA may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative power.

4.15. EG 8.7 provides that the FSA will consider exercising its own initiative power as a matter of urgency where:

(1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and

(2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.

4.16. EG 8.8 gives examples of situations that will give rise to the serious concerns mentioned in EG 8.7. These include information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.

4.17. EG 8.9 provides that the FSA will consider the full circumstances of each case when it decides whether an urgent variation of Part IV permission is appropriate, including, but not limited to:-

(1) The extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the FSA's urgent exercise of own-initiative powers will be appropriate, to protect the consumers' interests (EG 8.9(1)).

(2) The seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach (EG 8.9(4)).

(3) The risk that the firm's conduct or business presents to the financial system and to confidence in the financial system (EG 8.9(7)).

(4) The firm's conduct. The FSA will take into account: (a) whether the firm identified the issue (and if so whether this was by chance or as a result of the firm's normal controls and monitoring); (b) whether the firm brought the issue promptly to the FSA's attention; (c) the firm's past history, management ethos and compliance culture; and (d) steps that the firm has taken or is taking to address the issue (EG 8.9(8)).

(5) The impact that use of the FSA's own-initiative powers will have on the firm's business and on its customers. The FSA will take into account the (sometimes significant) impact that a variation of permission may have on a firm's business and on its customers' interests, including the effect of variation on the firm's reputation and on market confidence. The FSA will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its regulatory objectives (EG 8.9(9)).

Supervision Handbook

4.18. Chapter 7 of the Supervision Handbook ("SUP") provides additional guidance on when the FSA will use its power to vary a Part IV permission on its own-initiative for supervision purposes.

4.19. SUP 7.3.1G provides that the FSA expects to maintain a close working relationship with certain types of firm and expects that routine supervisory matters arising can be resolved during the normal course of this relationship by, for example, issuing individual guidance where appropriate. However, the FSA may seek to vary a firm's Part IV permission in circumstances where it considers it appropriate for the firm to be subject to a formal requirement, breach of which could attract enforcement action.

The FSA's Principles for Business

4.20. The FSA's Principles for Business are a general statement of the fundamental obligations of firms under the regulatory system.

4.21. Principle 1 provides that a firm must conduct its business with integrity.

4.22. Principle 2 provides that a firm must conduct its business with due skill, care and diligence.

4.23. Principle 3 provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

4.24. Principle 6 provides that a firm must pay due regard to the interests of its customers and treat them fairly.

4.25. Principle 9 provides that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

The Threshold Conditions ("COND")

4.26. The part of the FSA Handbook called Threshold Conditions ("COND") gives guidance on the threshold conditions. The threshold conditions represent the minimum conditions which a firm is required to satisfy in order to be given Part IV permission (COND 1.2.1G).

4.27. COND 1.3.2G(2) provides that in relation to threshold conditions 4 and 5, the FSA will consider whether a firm is ready, willing and organised to comply, on a

continuing basis, with the requirements and standards under the regulatory system which apply to the firm.

4.28. COND 2.5 sets out guidance on threshold condition 5 (suitability). COND 2.5.2G(1) provides that threshold condition 5 requires the firm to satisfy the FSA that it is 'fit and proper' to have Part IV permission having regard to all the circumstances, including its connections with other persons, the range and nature of its proposed (or current) regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.

4.29. COND 2.5.3G(1) and (2) state that the emphasis of threshold condition 5 is on the suitability of the firm itself. In certain circumstances, however, the FSA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm. When assessing this threshold condition in relation to a firm, the FSA may have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm.

4.30. COND 2.5.4G provides that when determining whether the firm will satisfy and continue to satisfy threshold condition 5, the FSA will have regard to all relevant matters, including, but not limited to, whether the firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; (b) has, or will have, a competent and prudent management; and (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

4.31. COND 2.5.6G provides that in determining whether a firm will satisfy, and continue to satisfy, threshold condition 5 in respect of conducting its business with integrity and in compliance with proper standards, the relevant matters may include but are not limited to:

(1) whether the firm has been open and co-operative in all its dealings with the FSA and any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system and other legal, regulatory and professional obligations (COND 2.5.6G(1));

(2) the firm has been the subject of, or connected to the subject of, any existing or previous investigation or enforcement proceedings including proceedings by the FSA or professional bodies; the FSA will, however, take both the nature of the firm's involvement in, and the outcome of, any investigation or enforcement proceedings into account in determining whether it is a relevant matter (COND 2.5.6G(3));

(3) the firm has contravened, or is connected with a person who has contravened, any provisions of the Act or any preceding financial services legislation, the regulatory system or the rules, regulations, statements of principles or codes of practice of other regulatory authorities, including professional bodies; the FSA will, however, take into account both the status of codes of practice or relevant industry standards and the nature of the contravention (COND 2.5.6G(4));

(4) the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under

the regulatory system that apply to the firm and the regulated activities for which it has, or will have, permission (COND 2.5.6G(6));

(5) the firm has put in place procedures which are reasonably designed to: (a) ensure that it has made its employees aware of, and compliant with, those requirements and standards under the regulatory system that apply to the firm and the regulated activities for which it has, or will have permission; (b) ensure that its approved persons (whether or not employed by the firm) are aware of those requirements and standards under the regulatory system applicable to them; (c) determine that its employees are acting in a way compatible with the firm adhering to those requirements and standards; and (d) determine that its approved persons are adhering to those requirements and standards.

4.32. COND 2.5.7 provides that, in determining whether a firm will satisfy and continue to satisfy threshold condition 5 in respect of having competent and prudent management and exercising due skill, care and diligence, relevant matters may include, but are not limited to whether:

(1) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities; and

(2) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards under the regulatory system;

5. FACTS AND MATTERS RELIED ON

Introduction

5.1. A2O is an independent financial advisor with 47 appointed representatives, which currently holds permissions to carry out the following regulated activities:

(1) advising (excluding pension transfers and opt outs);

(2) advising on pension transfers and opt outs;

(3) advising on a home reversion plan;

(4) advising on regulated mortgage contracts;

(5) agreeing to carry on a regulated activity;

(6) arranging (bringing about) a home reversion plan;

(7) arranging Deals in Investments;

(8) arranging Regulated Mortgage Contracts;

(9) dealing in Investments as an agent;

(10) making arrangements (Regulated Home Finance);

(11) making Arrangements (Designated Investment Business); and

(12) making Arrangements for a home reversion plan.

5.2. The board of directors of A2O is made up of:

(1) Adrian Williams (CF1 from 20 August 2003);

(2) Thomas Brennan (CF2 from 30 June 2004);

(3) Richard Lindley (CF1 from 26 March 2003); and

(4) Andrew Ruff (CF1, CF10 and CF11, all from 26 March 2003).

5.3. In addition to these individuals, there are 101 individuals holding controlled function CF30 (customer function) in relation to A2O.

5.4. As a result of a review of client files of an AR of A2O, on 3 April 2009, the FSA wrote to A2O setting out concerns about the suitability of recommendations provided by that AR, the effectiveness of A2O's controls over its ARs in general and the effectiveness of its compliance monitoring arrangements.

5.5. Following further correspondence with A2O, and as a result of these concerns about A2O's oversight of the sales of regulated products through its ARs, on 8 May 2009, the FSA gave A2O a draft scope document giving it notice of the FSA's intention to require it to commission a skilled persons report. The purpose of the skilled person's report was to report on A2O's standards of compliance oversight and controls, sales monitoring processes and corporate governance and oversight.

5.6. On 20 May 2009, A2O nominated a skilled person to produce the report, as required in the 8 May 2009 letter, and on 15 June 2009, the FSA confirmed this nomination and a skilled person was appointed to provide the skilled person's report (the "s.166 report"). On 3 July 2009, the FSA provided A2O with a final scope document detailing the purpose of the s.166 report (to establish A2O's standards of compliance oversight and controls, sales monitoring processes and corporate governance and oversight). The period reviewed by the skilled person was the period from January 2008 to June 2009.

5.7. The skilled person met with A2O on 15 October 2009 to present the main findings of the s.166 report and to make A2O aware how conclusions were reached.

5.8. On 19 October 2009, the s.166 report was provided to the FSA by the skilled person. The s.166 report mentioned in a number of places that A2O had informed the skilled person that it had made or was making improvements in its compliance arrangements. Therefore, on 30 October 2009, the FSA wrote to A2O asking it to describe any improvements, whether already made or planned, by 20 November 2009. The FSA asked A2O to include in its response:

(1) actions taken or to be taken to address the significant and systemic failings in A2O's compliance arrangements;

(2) actions taken or to be taken in relation to clients identified in the s.166 report as having received unsuitable or unclear advice, including details of any redress made; and

(3) actions taken or to be taken in respect of those advisers who were found in the s.166 report to have given unsuitable advice, including details of any enhanced training requirements and/or any disciplinary action in respect of those advisers.

5.9. On 20 November 2009, the FSA received A2O's response to its 30 October 2009 letter (the "Response").

5.10. The findings of the s.166 report and A2O's Response are summarised below.

The s.166 report

5.11. The skilled person reviewed 41 client files selected from A2O's business register. The dates of the advice given in each of these files ranged from 29 March 2007 to 27 May 2009. Of these 41 files:-

(1) 22 were selected by the skilled person because they involved high risk sales. Of these, only 12 files had evidence of having been checked by a supervisor.

(2) Six were selected from sales where A2O had completed its own supervisory checks in the course of regular supervisory activities.

(3) 13 were selected from files that A2O had used to assess new advisor competency. It was unclear in two of these files whether a supervisor assessment had been completed.

5.12. The skilled person also carried out the following actions:

(1) conducted interviews with key members of A2O's staff, including directors and supervisors;

(2) reviewed examples of recruitment and induction files and of file assessments carried out by A2O's compliance staff;

(3) reviewed A2O's Compliance Manual and Training and Competency Scheme; and

(4) reviewed minutes of Board Meetings.

5.13. The skilled person concluded that, during the period in question, there were serious failings in A2O's systems and controls which led to client detriment. In particular:-

(1) A2O did not carry out sufficient checks on new recruits, even where there were circumstances which should have alerted it to possible concerns about the adviser or AR being recruited.

(2) A2O's approach to assessing the competence of new recruits was to class a person as a competent adviser if that person had been classed as competent in his previous role and it failed to take sufficient steps to be able to satisfy itself that new advisers were in fact competent to undertake the types of work which they were allowed to carry out.

(3) A2O failed to follow its own training and competence scheme and failed to assess and monitor the ongoing competence and training needs of advisers. Poor test results were not followed up by supervisors and advisers who had failed tests in relation to certain products were allowed to continue to recommend those products to customers.

(4) A2O's research on funds that its ARs went on to recommend to customers was insufficient and the risk rating given to some funds, as well as the reasons for that rating, is unclear from the relevant files.

(5) Reviews of client files show that fact finds were poor and the lack of information obtained meant it was not possible to identify the client's needs or to assess the suitability of the product recommended. Similarly, suitability reports were not detailed enough to show the reasons why the advice was suitable and how it met the client's needs, both in terms of the investment in question and also in terms of the client's overall portfolio.

(6) There was a tendency amongst advisers inappropriately to apply exemptions such as 'high net worth' and 'sophisticated', and incorrectly to classify clients as 'professional' where this could not be justified from the information in the client file. There was then a heavy reliance on these exemptions and classifications to advise clients to invest in high risk products.

(7) Products recommended to clients did not match the client's risk profile.

(8) There was clear evidence of churning and commission bias. Few files demonstrated that the client was offered a pure fee option and in some cases high levels of commission had been taken by the adviser, without challenge by A2O's compliance team.

(9) File checks were not sufficiently robust, stringent, timely or comprehensive. Not all high risk business was reviewed and in many cases the supervisors only reviewed the fact find and suitability report. The supervisors failed to identify clear breaches in these files, despite there being sufficient information to enable them to do so. The supervisors passed 99% of the files they reviewed, whereas the skilled person failed 98% of the files it reviewed. Where problems were identified by the supervisors, the adviser's explanations were not challenged.

(10) A2O's central compliance function was under-staffed and under-resourced. There was no assessment of the coaching and assessment skills or knowledge of the supervisors and the competence of the supervisors could not be demonstrated from their training files.

(11) Some ARs had 'in-firm supervisors' or 'mentors', which A2O placed reliance upon. They had not attended a supervisors course and had not been confirmed as competent supervisors but were allowed to monitor and sign off advisers at the AR.

(12) Record keeping was poor across several areas of the business, including client files, recruitment files, induction assessments and file checks.

(13) A2O's KPIs and MI submitted to the board did not reflect the risks that it was exposed to and, where this information did point to problems with advisers, this was not picked up or acted on.

A2O's Response

5.14. A2O's Response set out improvements that it had made, and was planning to make, in its systems and controls. The improvements described included:

(1) developing expanded checklists for use by supervisors in carrying out file reviews;

(2) recruitment of five extra members of staff for the compliance team (including one administrative assistant and three file checkers);

(3) enhanced use of computer software to gather and monitor compliance data;

(4) including an expanded range of documents as part of file checks;

(5) introduction of file check KPIs which will be reviewed on a monthly basis;

(6) introduction of 100% file checking on pension switching cases;

(7) introduction of changes to the professional standards manual, including a new section on unregulated collective investment procedures providing additional information on client classification, and a new section on financial crime and money laundering;

(8) creation of a test to assess adviser knowledge of complex products; and

(9) a commitment to instruct an external consultant, who developed the original training and competence scheme (in relation to which the skilled person has identified serious failings), to amend the scheme in light of the s.166 report.

5.15. Despite these steps taken by A2O, for the reasons set out below, the FSA remained and remains concerned that A2O's systems and controls are not sufficient to protect consumers. In fact, the FSA considered and considers that A2O's Response indicates a failure to appreciate the seriousness of the concerns raised about its business since 3 April 2009 and which were fully articulated in the s.166 report.

5.16. Crucially, the Response did not address the FSA's request of 30 October 2009 that A2O describe actions taken or to be taken in relation to clients identified in the s.166 report as having received unsuitable or unclear advice, including details of any redress

made, and did not sufficiently address the FSA's request that it describe actions taken or to be taken in respect of those advisers who were found in the s.166 report to have given unsuitable advice, including details of any enhanced training requirements and/or any disciplinary action in respect of those advisers. The FSA was and is therefore concerned that client detriment has not been investigated, clients have not received any redress due to them and that incompetent advisers who are known to have given unsuitable advice are being allowed to continue to advise clients.

5.17. In addition, despite the improvements that A2O stated that it had made, these very improvements demonstrated, by what they omitted, that a number of serious concerns about A2O's systems and control had and have not been sufficiently addressed. In particular:-

(1) The Response failed to identify any measures that have been or will be taken to improve A2O's recruitment and induction processes or to assess advisers who were incorrectly classed as competent on joining the network.

(2) The Response failed to identify any measures that have been or will be taken to ensure that its training and competence scheme would be followed or that advisers who have not demonstrated their competence to advise on particular products will be prevented from doing so.

(3) The Response failed to identify any measures that have been or will be taken to reassess funds in relation to which the skilled person concluded that insufficient research had been carried out or to ensure that research is properly carried out in future.

(4) Although some improvements have been made to file checking procedures, the supervisors who had been found by the skilled person to have failed to identify and/or act on breaches, and whose competence had not been demonstrated, continue to undertake file checks, and have been appointed as managers of the new file checking staff. One of these individuals achieved a score of 66% in a test on complex products, but is considered by A2O to be competent to review files in relation to this type of product.

(5) Although new staff have been recruited to the compliance function, there is no evidence that A2O has carried out a comprehensive skills analysis on either new or existing compliance staff and the skilled person's concerns about the skills and level of resource in A2O's compliance function has therefore not been adequately addressed.

(6) Although the use of software to gather and monitor MI has been enhanced, the Response failed to identify any measures that have been or will be taken to ensure that the source data that goes into the software is accurate or that the underlying actions (for example, the file reviews) are conducted to the required standard.

5.18. In addition, A2O provided, as part of its Response, a 'network risk summary' dated 30 June 2009. This document only highlights four compliance related risks. These are: legacy risks of members recruited; breaches or poor advice given by existing members; unforeseen review/significant compliance cost; and increased complaints

due to adverse market conditions. The probability score of breaches or poor advice given by existing members is 'm' (medium). In addition to the compliance risks identified, the document identifies the following risks:

(1) Four 'strategic risks', all of which relate to a potential failure to recruit sufficient ARs and advisers; and

(2) Six 'operational risks', three of which relate to potential barriers to the growth of the firm, for example because of pressure on the executive directors.

5.19. The network risk summary also indicates, by initials, the person responsible for carrying out the actions that are identified in the document. In 13 of the 22 actions proposed, members of the compliance function are identified as the person responsible. This department has been identified by the skilled person as having been under-resourced to carry out its compliance function.

5.20. The network risk summary therefore further demonstrates A2O's failure to identify and prioritise compliance issues and risks, leading to a failure to comply with the standards and requirements of the regulatory system.

Events following the Response

5.21. The FSA discussed with A2O its concerns that A2O had not taken and was not proposing to take sufficient action to address the failings in its business. As a result of these discussions, on 8 January 2010, A2O submitted a voluntary variation of permission application ("VVoP"), dated 6 January 2010, whose terms had been agreed with the FSA. The terms of the VVoP were expressed to take immediate effect and provided that A2O:-

(1) Would not engage in the provision of advice relating to or sales of:

(a) occupational pension transfer business;

(b) pension switching or transfer business;

(c) pension drawdown business;

(d) split capital investment business; and

(e) structured products (including, but not limited to, index and equity linked notes, term notes and units generally consisting of a contract to purchase equity and/or debt securities at a specific time) that are derived from and/or based on:

(i) a single security or securities;

(ii) a basket of stocks;

(iii) an index;

(iv) a commodity;

(v) debt issuance; and/or

(vi) a foreign currency.

(2) In respect of collective investment schemes, would only engage in the marketing, provision of advice relating to and sales of schemes which are authorised and recognised by the Financial Services Authority as set out under Part XVII of the Financial Services and Markets Act 2000.

(3) Would not conduct any new business unless and until that business has been reviewed by an external compliance consultant approved by the FSA and that compliance consultant had confirmed that it considered that the business complied with all applicable rules and requirements of the regulatory system.

(4) Would, as soon as was practicable, and in any event by close of business on 12 January 2010:

(a) send a letter on its headed notepaper by first class post and/or electronically to each of its appointed representatives in a form approved by the FSA prior to its dispatch, notifying them of the change in its permissions; and

(b) provide the FSA with copies of the said letter together with a list of all appointed representatives to which it was sent and the date on which it was sent.

5.22. This variation of permission was expressed not to apply to any regulated activities undertaken to complete existing transactions. Existing transactions were where all proposals and/or applications had been completed, signed and dated by the client, prior to the imposition of the variation.

5.23. At 4.47 pm on 13 January 2010, A2O sent the FSA a copy of a letter it had sent to its ARs by email on 6 January 2010 and an extract from a follow up email that it had sent on 12 January 2010 (together, the "Communications"). Neither the letter nor the email had been approved by the FSA prior to dispatch, as required by the terms of A2O's part IV permission (as varied by the VVoP dated 6 January 2010). In addition, the Communications failed to state that the changes in procedures they described were being imposed under a variation to A2O's Part IV permission, failed adequately to describe the new requirements or to give them appropriate prominence, and seriously misrepresented the circumstances in which these changes had come about. Further, it did not appear that the Communications had been sent to all of A2O's ARs and they had been sent to an entity that did not appear to be an AR of A2O.

Conclusion

5.24. In summary, serious concerns have been raised with A2O in relation to its systems and controls since April 2009 and were fully articulated to it in October and November 2009. A2O has not put in place adequate measures to satisfy the FSA that those concerns have been or will be addressed and has failed to act within the scope of its Part IV permission, as amended by a VVoP application that was submitted specifically to deal with these concerns.

5.25. The FSA is therefore concerned that A2O may have breached Principles 6 and 9 of the FSA's principles for business, in that it does not appear to have paid due regard to the interests of its customers and treated them fairly and it appears not to have taken reasonable care to ensure the suitability of its advice to customers who were entitled to rely upon its judgment.

5.26. In addition, A2O may have also breached Principles 1, 2 and/or 3 of the FSA's principles for business, in that it does not appear to have conducted its business with integrity, conducted its business with due skill, care and diligence, and/or taken reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

6. ANALYSIS

6.1. In light of the matters described above, the FSA is concerned that A2O is not a fit and proper person having regard to all the circumstances, including its connection with any person, the nature of any regulated activity that it carries on or seeks to carry on and the need to ensure that its affairs are conducted soundly and prudently. The FSA is also concerned that customers of A2O may have received unsuitable advice and may therefore have suffered detriment.

6.2. Despite first being alerted to concerns of this nature in April 2009, and despite submitting a VVoP application on 8 January 2010 which purported to address the FSA's concerns, A2O has failed to demonstrate that it is willing and/or able to comply with the requirements and standards of the regulatory system. To date, the FSA has seen no evidence that A2O has taken or will take sufficient action to manage and address the causes and results of any past unsuitable advice and has failed to put in place adequate procedures to ensure that unsuitable advice is not given to its customers in future or that its ARs act within the scope of its Part IV permission.

6.3. The FSA is particularly concerned about the risk to consumers of A2O because of the nature of many of the products that its advisers and ARs have been recommending, which include products that are considered to be high risk investments such as, for example, unregulated collective investment schemes and pension fund transfers and because it acted outside the scope of its Part IV permission within days of submitting a VVoP application, showing a total disregard for the requirements it contains.

6.4. The FSA has also taken account of the fact that A2O appears not to have identified any of the widespread and serious failings in its systems and controls until these were raised with it, first by the FSA supervisor, and then through the s.166 report.

6.5. Further, despite the detailed review by the skilled person of its systems and controls and compliance arrangements which was instigated at the FSA's direction and which identified serious failings, A2O has demonstrated an inability to take the issues raised sufficiently seriously and has failed to take the necessary action to address these serious failings, including failing to prevent incompetent advisers from giving advice, failing to identify and compensate customers who may have suffered detriment and failing to act within the scope of its Part IV permission.

6.6. For these reasons, the FSA considers that it is desirable to exercise its power under section 45 of FSMA to vary A2O's Part IV permission in the way described in

paragraphs 1.1 and 1.2 above in order to protect the interests of consumers and potential consumers. Specifically, A2O's failure to take appropriate action to address the concerns raised and its failure to act within the scope of its Part IV permission causes the FSA to consider that A2O has failed to appreciate the seriousness of those concerns and also makes it likely that customers and potential customers will suffer detriment as a result of unsuitable advice given by A2O's advisers and ARs unless action is taken by the FSA to prevent this from occurring.

6.7. The FSA considers that there are serious concerns about the firm or its business that need to be addressed immediately. The FSA has taken into account the extent of any loss, or risk of loss, or other adverse effect on consumers; the seriousness of A2O's suspected breaches of the FSA's rules and the steps required to be taken to correct those breaches; and A2O's conduct in first failing to identify and then failing adequately to address those breaches. In light of these matters, and in order to protect the interests of consumers and potential consumers by protecting them from receiving unsuitable advice, entering into inappropriate investments and suffering financial detriment, the FSA considers that it is necessary for the variation of permission to take effect immediately.

7. CONCLUSIONS

7.1. By reason of the facts and matters set out above, the FSA considers that its statutory objectives can best be served by varying A2O's permission in the way described in paragraphs 1.1 and 1.2 above. In particular, the FSA considers it desirable to take such action in order to protect the interests of consumers or potential consumers of A2O and its network.

8. DECISION MAKER

8.1. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Deputy Chairman of the Regulatory Decisions Committee.

9. IMPORTANT

9.1. This First Supervisory Notice is given to you in accordance with section 53(4) of the Act. The following statutory rights are important.

The Tribunal

9.2. You may refer this matter to the Financial Services and Markets Tribunal ("the Tribunal"). Under section 133 of the Act, you have 28 days from the date you were sent this Supervisory Notice to refer the matter to the Tribunal or such other period as specified in the Tribunal Rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Notice. The Tribunal's address is: 15-19 Bedford Avenue, London WC1B 3AS (telephone 020 7612 9700). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal Rules.

9.3. You should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the notice to the FSA.

Any copy notice should be sent to Valerie Stainton at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

9.4. You have the right to make written and oral representations to the FSA (whether or not you refer this matter to the Tribunal). If you wish to make written representations you must do so by 21 February 2010. Written representations should be made to the Regulatory Decisions Committee and sent to Husayn Rahman, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If you wish to make oral representations, you should inform Husayn Rahman by 1 February 2010**.** If you do not notify us by this date, you will not, other than in exceptional circumstances, be able to make oral representations.

Confidentiality and publicity

9.5. You should note that this Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents and for the purpose of carrying out the requirement set out in paragraph 1.2 above). You should also note that section 391 of the Act requires the FSA, when the Supervisory Notice takes effect, to publish such information about the matter as it considers appropriate.

FSA contacts

9.6. If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Husayn Rahman of RDC Professional Support Services (direct line: 020 7066 1072).

9.7. For more information concerning this matter generally, you should contact Valerie Stainton of the FSA (direct line: 020 7066 9490).

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Martin Hagen

Deputy Chairman, Regulatory Decisions Committee